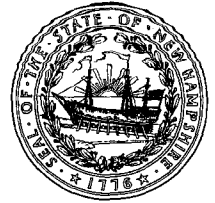




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

John Simmeck
Diane Simmeck

Re: Gilsum Mine Road, Alstead, NH
Alstead Tax Map 34, Lot 8
Wetlands Bureau File #2002-1992

ADMINISTRATIVE ORDER
No. WD 06-014

March 31, 2006

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to John Simmeck and Diane Simmeck pursuant to RSA 482-A:6. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly-constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. John Simmeck and Diane Simmeck are individuals believed to be residing at property located on Gilsum Mine Road, Alstead, NH, more particularly described as Alstead Tax Map 34, Lot 8 (the "Property").

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 482-A, the Department of Environmental Services ("DES") regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. RSA 482-A:3, I states that "[no] person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."
3. RSA 482-A:14, III provides that "[f]ailure, neglect or refusal to comply with [RSA 482-A] or rules adopted under [that] chapter, or an order or condition of a permit issued under [RSA 482-A], and the misrepresentation by any person of material fact made in connection with any activities regulated or prohibited by [RSA 482-A] shall be deemed violations of RSA 482-A."
4. John Simmeck and Diane Simmeck are individuals living on property located on Gilsum Mine Road in Alstead more particularly described as Alstead Tax Map 34, Lot 8 (the "Property.")

5. "Mountain Parks International, Inc." is the deeded owner of the Property. Based on communications with the Town of Alstead Police Department, John and Diane Simmeck live on the Property and have described themselves as the "caretakers" of the Property. John Simmeck pays the real estate taxes on the Property.
6. Based on an investigation conducted by the Keene Police Department in 1999, it is believed that John and Diane Simmeck are brother and sister, originally from Connecticut. The investigation suggests that Mountain Parks International, Inc., ("MPI") is not a valid corporation and uses the same or a similar address as has been used by John and Diane Simmeck in other questionable real estate transactions.
7. On December 1, 2005, DES personnel conducted aerial surveillance of the Property. During the surveillance, DES personnel observed the following:
 - a. An extensive wetland complex had been significantly impacted by dredging and filling.
 - b. A perennial stream had been straightened and rerouted around the filled area.
 - c. A bridge had been constructed across the rerouted stream channel.
 - d. Heavy machinery, multiple cars, and trailers were observed on the Property.
 - e. No siltation/erosion controls were observed to prevent on-going siltation into adjacent wetlands and surface waters.
8. Further analysis by DES personnel of 1998 and 2003 Geographic Information System (GIS) aerial coverages, as well as aerial photos taken during the December 1, 2005 inspection, indicate that approximately 48,000 sq. ft. of wetland has been filled, approximately 8,000 sq. ft. (approx. 620 linear feet) of wetland has been dredged, and approximately 550 linear feet of perennial streams that previously meandered through the wetland complex have been rerouted.
9. Research by DES personnel, including review of National Wetland Inventory maps and USDA Natural Resource Conservation Service soil maps indicate that there were wetland areas on the Property in the subject area prior to the disturbance.
10. No permits have been issued for work in wetlands or surface waters on the Property.

D. DETERMINATION OF VIOLATIONS

1. John Simmeck and Diane Simmeck have violated RSA 482-A:3,I, by filling approx. 550 linear feet of perennial streams that previously meandered through a large wetland complex without obtaining a permit from DES.

2. John Simmeck and Diane Simmeck have violated RSA 482-A:3,I by dredging approx. 8,000 sq. ft. (approx. 620 linear feet) of wetland to redirect the rerouted perennial streams without obtaining a permit from DES.
3. John Simmeck and Diane Simmeck have violated RSA 482-A:3,I, by filling approx. 48,000 sq. ft. of wetland without obtaining a permit from DES.
4. John Simmeck and Diane Simmeck have violated RSA 482-A:3,I, by failing to install appropriate siltation and erosion controls resulting in additional deposition of material into adjacent undisturbed streams and wetlands.

E. ORDER

Based on the above findings, DES hereby orders John Simmeck and Diane Simmeck as follows:

1. **Immediately cease and desist** all dredging and filling activities in surface waters and wetlands on the Property, except as necessary to stabilize the Property pursuant to this Order.
2. **By April 30, 2006** retain a certified wetland scientist to delineate wetlands, prepare a restoration plan, and supervise the implementation of the restoration in accordance with Item E.3 below. Submit a letter of retention from the certified wetland scientist to DES documenting compliance with this provision of the Order.
3. **By May 31, 2006** submit to DES for approval a restoration plan for wetlands and streams on the Property. The restoration plan shall be prepared and stamped by a certified wetland scientist and stamped by a licensed land surveyor, and include the following:
 - a. Existing conditions and land topography, with dimensions drawn to scale, including surveyed property boundaries in the subject area, the delineated footprint of all wetlands, streams, ponds, and jurisdictional runoffs on the Property. The delineations shall be prepared in accordance with Section F of the *1987 Army Corps of Engineers Wetlands Delineation Manual*;
 - b. The delineated footprint of all disturbed areas in accordance with Section F, including deposition of material into any adjacent wetlands and streams;
 - c. The area, in square feet, of disturbance on the Property;
 - d. A plan for reestablishing wetlands, streams, and associated banks to their original footprint along with proposed conditions after reestablishing the jurisdictional areas;
 - e. A detailed proposed means of stabilization and sediment and erosion control (silt fence, hay bales, mattings, *etc.*);
 - f. A proposed schedule, restoration, and construction sequence listing equipment and

methods for accomplishing restoration as well as an anticipated restoration compliance date;

- g. A detailed proposed planting plan for the reestablishment, stabilization, and re-vegetation of the restoration areas; and

4. **Implement** the restoration plan proposed in accordance with Item E.3 above, only after receiving written approval, and as conditioned, by DES.

Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Wetlands Bureau
DES Water Division
P.O. Box 95
Concord, NH 03302-0095
Phone: (603) 271-2147
Fax: (603-271-6588

F. APPEAL

Any person aggrieved by this Order may request that DES reconsider this determination within 20 days of the date of the Order. The request for reconsideration must comply with Wt 203.01(d) (copy attached), and will be processed in accordance with Wt 203.01(e)-(j). Any party not satisfied with the decision on reconsideration may appeal to the Wetlands Council. Please note that under RSA 482-A:10, II, the Council may not consider any ground that is not set forth in the request for reconsideration.

Filing an appeal or request for reconsideration of the Order will not automatically relieve John Simmeck or Diane Simmeck of their obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 482-A:13 and 482-A:14 provide for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. DES will continue to monitor John Simmeck's and Diane Simmeck's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Cheshire County Registry of Deeds so as to run with the land.

COPY

Harry T. Stewart, P.E., Director
Water Division

COPY

Michael P. Nolin, Commissioner
Department of Environmental Services

cc: Gretchen Hamel, Legal Unit Administrator
Public Information Officer, DES PIP Office
Jennifer Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Alstead Conservation Commission
Alstead Selectmen's Office